

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII

901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

08 JAN 30 PM 3:11

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)	Docket No. FIFRA 07-2008-0005
)	
Midwest Veterinary Supply Company)	
a.k.a. Mid-Western Veterinary Supply)	
Company)	CONSENT AGREEMENT
125 Main Street)	AND
Old Monroe, Missouri 63369)	FINAL ORDER
)	
Respondent)	

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency, Region VII (EPA or Complainant), and Midwest Veterinary Supply Company a.k.a. Mid-Western Veterinary Supply Company (Respondent) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b), 22.18(b)(2), and 22.18(b)(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and 22.18(b)(3).

FACTUAL ALLEGATIONS

Jurisdiction and Statutory Requirements

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l.

2. This Complaint serves as notice that the United States Environmental Protection Agency (EPA) has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

Parties

3. The Complainant, by delegation from the Administrator of the EPA and the Regional Administrator, EPA, Region VII, is the Director of the Water, Wetlands and Pesticides Division, EPA, Region VII.

4. The Respondent is Midwest Veterinary Supply Company a.k.a. Mid-Western Veterinary Supply Company (Midwest Vet), a pesticide distributor located at 125 Main Street in Old Monroe, Missouri. The Respondent is and was at all times referred to in this Complaint, a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and a corporation qualified to do business in the state of Missouri.

Violations

General Allegations

5. The Complainant hereby states and alleges that Respondent has violated FIFRA as follows:

6. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) provides that it is unlawful for any person in any state to distribute or sell to any person any pesticide whose registration has been cancelled or suspended.

7. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term "to distribute or sell" to mean to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.

8. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states it shall be unlawful for any person in any state to distribute or sell to any person any pesticide which is adulterated or misbranded.

9. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states a pesticide is misbranded if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

10. Section 2(q)(1)(C) of FIFRA, 7 U.S.C. § 136(q)(1)(C), states a pesticide is misbranded if it is an imitation of, or is offered for sale under the name of another pesticide.

11. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), states a pesticide is misbranded if any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

12. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states a pesticide is misbranded if the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with,

together with any requirements imposed under Section 3(d) of this Act, are adequate to protect health and the environment.

13. Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), states a pesticide is misbranded if the label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under Section 3(d) of this Act, is adequate to protect health and the environment.

14. FRONTLINE® TOP SPOT FOR DOGS, 23-44 lbs., 45-88lbs., is a pesticide registered under EPA Registration Number (EPA Reg. No.) 65331-3, to registrant Merial Limited in Iselin, New Jersey. Merial Limited is now located in Duluth, Georgia. The label submitted by Merial Limited for EPA Reg. No. 65331-3 was accepted by EPA on August 11, 2000, and was the label in effect for EPA Reg. No. 65331-3 on May 1, 2004.

15. FRONTLINE® PLUS FOR DOGS, 45-88lbs., is a pesticide registered under EPA Registration Number (EPA Reg. No.) 65331-5, to registrant Merial Limited in Iselin, New Jersey. Merial Limited is now located in Duluth, Georgia. The label submitted by Merial Limited for EPA Reg. No. 65331-5 was accepted by EPA on July 21, 2000, and was the label in effect for EPA Reg. No. 65331-5 on April 1, 2004.

16. FRONTLINE® SPOT ON DOGS, FOR DOGS OF 10 TO 20 kg., (FOR DOGS AND PUPPIES 10 WEEKS OR OLDER AND 23-44 lbs.- stickered) was distributed and/or held for sale by Respondent and is an imitation of the EPA registered pesticide referred to in Paragraph 14. It is misbranded as defined in Paragraphs 9 through 13.

17. FRONTLINE® SPOT ON DOGS, FOR DOGS OF 20 TO 40 kg., (FOR DOGS AND PUPPIES 10 WEEKS OR OLDER AND 44-88 lbs.- stickered) was distributed and/or held for sale by Respondent and is an imitation of the EPA registered pesticide referred to in Paragraph 15. It is misbranded as defined in Paragraphs 9 through 13.

18. FRONTLINE® SPOT ON DOGS, FOR DOGS OF 20 TO 40 kg., (FOR DOGS 45-88 lbs.-stickered), was distributed and/or held for sale by Respondent and is an imitation of the EPA registered pesticide referred to in Paragraph 15. It is misbranded as defined in Paragraphs 9 through 13.

19. On or about April 1, 2004 and May 19, 2006, a representative of the Missouri Department of Agriculture (MDA) conducted an inspection at Miller's Feed and Pet store located at 629 Karsch in Farmington, Missouri, to determine the status of that company's compliance with FIFRA. At the time of the inspection, distribution and/or sales of the pesticide mentioned in Paragraphs 16, 17, and 18 were documented. The Miller's Feed and Pet store purchased these imitation pesticide pet products from Respondent during the summer of 2003 and spring of 2004. During the April 1, 2004 inspection three State Stop Sales, Use, Or Removal Orders (SSUROs) were placed on these unregistered and misbranded pesticide products.

20. Miller's Feed and Pet store's Invoice No.156252, dated July 9, 2003, documents the receipt of six packages of the imitation pesticide product referred to in Paragraph 16 and four packages of the imitation pesticide product referred to in Paragraph 17 from Respondent. Photographs taken during the inspection, referenced in Paragraph 19, document that the pesticides are imitations of products referred to in Paragraphs 14 and 15 and were misbranded as follows:

- a) the pesticide was manufactured in France and packaged in England ;
- b) the pesticide packager name was printed on the internal and external packaging;
- c) the words "usage veterinarire" were printed on the internal packaging
- d) the active and inert ingredients statement, signal work "Caution and Keep Out of Reach of Children" statement, EPA Est. No. and EPA Reg. No. and partial First Aid statement were stickered on the external packaging and not printed on the external packaging;
- e) product is not packaged in the required child resistant packaging
- f) metric units of measure were used in listing dosages of active ingredients of dogs to be treated; and,
- g) directions for use were for pests not native to the United States.

Labels applied to these photographed products are not consistent with EPA accepted labels for Merial FRONTLINE ® EPA Reg. No. 65331-3 and EPA Reg. No. 65331-5 pet products.

21. Miller's Feed and Pet store's Invoice No.162382, dated March 9, 2004, documents the receipt of three packages of the imitation pesticide product referred to in Paragraph 18 from Respondent. Photographs taken during the inspection, referenced in Paragraph 19, document the pesticides are imitations of product referred to in Paragraph 15 and were misbranded as follows:

- a) the pesticide was manufactured in France and packaged in England ;
- b) the pesticide packager name was printed on the internal and external packaging;
- c) the words "usage veterinarire" were printed on the internal packaging
- d) the active and inert ingredients statement, signal work "Caution and Keep Out of Reach of Children" statement, EPA Est. No. and EPA Reg. No. and partial First Aid statement were stickered on the external packaging and not printed on the external packaging;
- e) product is not packaged in the required child resistant packaging
- g) metric units of measure were used in listing dosages of active ingredients of dogs to be treated; and,
- g) directions for use were for pests not native to the United States.

Labels applied to these photographed products are not consistent with EPA accepted labels for Merial FRONTLINE ® EPA Reg. No.65331-5 pet product.

Count 1

22. The facts stated in paragraphs 6 through 21 are realleged and incorporated as if fully stated herein.

23. On or about April 1, 2004 and May 19, 2006, the MDA representative collected Invoice No. 156252, showing that the Respondent had sold six boxes, containing three 1.34 ml.

or 134 mg. pipettes, of the imitation pesticide product referred to in Paragraph 16 and four boxes, containing three 2.68 ml. or 268 mg. pipettes, of the imitation pesticide product referred to in Paragraph 17 to Miller's Feed and Pet in Farmington, Missouri on July 9, 2003.

24. The imitation pesticide product FRONTLINE® SPOT ON DOG, (23-44 lbs. and 44-88 lbs.- stickered) referred to in Paragraphs 16, 17 and 23 were not encompassed within the terms of the product registration under EPA Reg. No. 65331-3 or EPA Reg. No. 65331-5 and required separate product registrations under Section 3 of FIFRA.

25. Title 40 C.F.R. § 152.44 states that any modification in the composition, labeling, or packaging of a registered product must be submitted by application to and approved by the Agency before the product as modified may be distributed or sold.

26. The imitation pesticide products referred to in Paragraphs 16 and 17 were modified as described in Paragraph 20 and had not been approved by EPA for sale or distribution.

27. Respondent violated Section 12(a)(1)(A), 7 U.S.C. § 136j(a)(1)(A) by distributing or selling the unregistered pesticide products referred to in Paragraphs 16 and 17.

Count 2

28. The facts stated in paragraphs 6 through 27 are realleged and incorporated as if fully stated herein.

29. During the inspections referred to in Paragraph 19, it was documented that the Respondent was distributing or holding for sale the imitation pesticide products referred to in Paragraphs 16 and 17.

30. The imitation pesticide product referred to in Paragraphs 16 and 17 were misbranded as described in Paragraphs 9 through 13 and 20.

31. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by selling or holding for sale the imitation pesticide products, referred to in Paragraphs 16 and 17, which were adulterated or misbranded.

Count 3

32. The facts stated in paragraphs 6 through 31 are realleged and incorporated as if fully stated herein.

33. On or about April 1, 2004 and May 19, 2006, the MDA representative collected Invoice No. 162382, showing that the Respondent had sold three boxes, containing three 2.68 ml. pipettes, of the imitation pesticide product referred to in Paragraph 18 to Miller's Feed and Pet in Farmington, Missouri on March 9, 2004.

34. The imitation pesticide product FRONTLINE® PLUS FOR DOGS, (44-88lbs.-stickered) referred to in Paragraphs 18 and 33 was not encompassed within the terms of the product registration under EPA Reg. No. 65331-5, and required separate product registration under Section 3 of FIFRA.

35. Title 40 C.F.R. § 152.44 states that any modification in the composition, labeling, or packaging of a registered product must be submitted by application to and approved by the Agency before the product as modified may be distributed or sold.

36. The imitation pesticide product referred to in Paragraph 18 was modified as described in Paragraph 21 and had not been approved by EPA for sale or distribution.

37. Respondent violated Section 12(a)(1)(A), 7 U.S.C. § 136j(a)(1)(A) by distributing or selling the unregistered pesticide product referred to in Paragraph 18.

Count 4

38. The facts stated in paragraphs 6 through 37 are realleged and incorporated as if fully stated herein.

39. During the inspections referred to in Paragraph 19, it was documented that the Respondent was distributing or holding for sale for sale the imitation pesticide product referred to in Paragraph 18.

40. The imitation pesticide product referred to in Paragraph 18 was misbranded as described in Paragraphs 9 through 13 and 21.

41. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by selling or distributing the imitation pesticide product, referred to in Paragraph 18, which was adulterated or misbranded.

CONSENT AGREEMENT

It is hereby agreed and accepted by the parties, that:

1. This Consent Agreement and Final Order is being entered into by the parties in full settlement of and release from all FIFRA civil penalties that might have attached as a result of allegations made above. Respondent has read the Consent Agreement, consents to its issuance and will comply with the terms of the Final Order.

2. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order set forth below.

3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.

4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

5. Respondent certifies by signing this Consent Agreement and Final Order that, to the best of its knowledge, it is presently in compliance with FIFRA, 7 U.S.C. § 136 et. seq. and all regulations promulgated thereunder.

6. Nothing in this Consent Agreement shall be construed as a release from any other action under any law and/or regulation administered by the U. S. Environmental Protection Agency. Nothing contained in the Final Order portion of this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

7. Each party shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement and Final Order.

8. Each signatory of this Agreement certifies that he or she is fully authorized to enter into the terms of this Consent Agreement and Final Order.

9. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty as specified in the Final Order. Respondent understands that its failure to timely pay any portion of the mitigated civil penalty described in Paragraph 1 of the Final Order below, may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties, late payment handling charges, and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an additional \$15 will be charged for each subsequent thirty (30) day period. Interest shall accrue thereon at the rate determined by the Secretary of the Treasury (currently four percent (4%) per annum for the period January 1, 2007 through December 31, 2007) on the unpaid balance until such civil penalty and accrued interest are both paid in full. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

FINAL ORDER

Pursuant to Section 14 of FIFRA, as amended, 7 U.S.C. § 136l, and according to the terms of the Consent Agreement set forth above, IT IS HEREBY ORDERED THAT:

1. Respondent, in settlement of the allegations set forth in the Consent Agreement, shall

pay a civil penalty for the violations cited herein, in the amount of Eight Thousand Eight Hundred Dollars (\$8,800.00). The payment of the civil penalty shall be made within thirty days of the effective date of this Order.

2. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer, United States of America" and remitted to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

3. The payment shall reference Docket Number, FIFRA 07-2008-0005 and In the Matter of Midwest Veterinary Supply Company a.k.a. Mid-Western Veterinary Supply Company. Copies of the check shall be forwarded to:

Jennifer Trotter
Office of Regional Counsel
United States Environmental Protection Agency
Region VII
901 North 5th Street
Kansas City, Kansas 66101

and

Kathy Robinson
Regional Hearing Clerk
Office of Regional Counsel
United States Environmental Protection Agency
Region VII
901 North 5th Street
Kansas City, Kansas 66101

4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

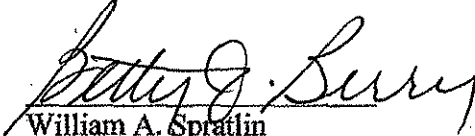
5. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

6. This executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 901 North 5th Street, Kansas City, Kansas, 66101.

COMPLAINANT:

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

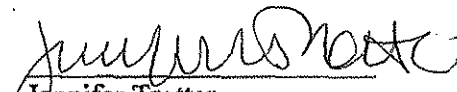
By:


William A. Spratlin
Director
Water, Wetlands, and Pesticides Division

Date:

01/29/08

By:


Jennifer Trotter
Attorney
Office of Regional Counsel

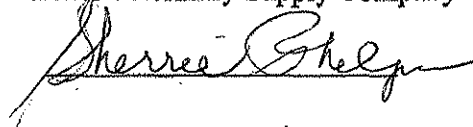
Date:

1-28-08

RESPONDENT:

Midwest Veterinary Supply Company
a.k.a. Mid-Western Veterinary Supply Company

By:



Title:

MANAGER/co-owner

Date:

1-18-08.

IT IS SO ORDERED. This Order shall become effective immediately.



ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency
Region VII

Date: January 30, 2008

IN THE MATTER OF Midwest Veterinary Supply Company a.k.a. Mid-Western Veterinary
Supply, Respondent
Docket No. FIFRA-07-2008-0005

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order
was sent this day in the following manner to the addressees:


Copy hand delivered to
Attorney for Complainant:

Jennifer Trotter
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

John Traeger
Attorney At Law
Gallop, Johnson & Nueman L.C.
101 South Hanley, Suite 1600
St. Louis, Missouri 63105

Dated: 1/30/08


Kathy Robinson
Hearing Clerk, Region 7